

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c); Ariz. R. Crim. P. 31.24

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MAY 16 2012
COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA,)	2 CA-CR 2012-0109-PR
)	DEPARTMENT B
Respondent,)	
)	<u>MEMORANDUM DECISION</u>
v.)	Not for Publication
)	Rule 111, Rules of
JOHN MONYDIT,)	the Supreme Court
)	
Petitioner.)	
_____)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF MARICOPA COUNTY

Cause No. CR2008162327001DT

Honorable Maria Del Mar Verdin, Judge

REVIEW GRANTED; RELIEF DENIED

William G. Montgomery, Maricopa County Attorney
By Adam Susser

Phoenix
Attorneys for Respondent

John Monydit

Kingman
In Propria Persona

ESPINOSA, Judge.

¶1 Pursuant to a plea agreement, John Monydit was convicted of third-degree burglary, with one historical prior felony conviction. The trial court sentenced him to an enhanced, aggravated, six-year prison term on March 17, 2009. On March 25, 2011,

Monydit filed a notice and petition for post-conviction relief pursuant to Rule 32, Ariz. R. Crim. P. In an order dismissing Monydit’s notice and petition as untimely, the trial court found he had “fail[ed] to state a claim for which relief can be granted in an untimely Rule 32 proceeding[.]” This petition for review followed.

¶2 On review, Monydit reurges the merits of his claims, but he fails to address the trial court’s determination that his claims are either precluded or not otherwise colorable. Although he attaches an affidavit to his petition for review, apparently in response to the trial court’s ruling that he had “failed to provide sufficient facts, affidavits, records, or other evidence” to support his non-precluded claims,¹ we will not consider the affidavit on review. *See State v. Martinez*, 134 Ariz. 119, 120, 654 P.2d 53, 54 (App. 1982) (“Appellate courts will review only those matters which appear in the records of the trial court.”); *cf. State v. Ramirez*, 126 Ariz. 464, 468, 616 P.2d 924, 928 (App. 1980) (reviewing court may not consider issues “never . . . presented to the trial court for its consideration”).

¶3 We will not disturb a trial court’s summary denial of post-conviction relief unless the court has abused its discretion. *See State v. Bennett*, 213 Ariz. 562, ¶ 17, 146 P.3d 63, 67 (2006). We find no such abuse here. In addition, the court clearly identified and correctly resolved the issues raised by Monydit’s notice and petition in a manner that

¹This ruling, which specifically referred to Monydit’s claim that he is “actually innocent,” applies equally to Monydit’s assertion, raised not as a separate claim in his post-conviction relief petition but in its statement of facts, that his “ineffective counsel . . . also refused to help [him] file for post conviction relief which was [n]ot [his] fault”

will be understood by any court in the future. *See State v. Whipple*, 177 Ariz. 272, 274, 866 P.2d 1358, 1360 (App. 1993). Because the court’s findings and conclusions are supported by the record before us, we adopt its ruling. *See id.* Accordingly, although we grant Monydit’s petition for review, we deny relief.

/s/ Philip G. Espinosa
PHILIP G. ESPINOSA, Judge

CONCURRING:

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

/s/ Virginia C. Kelly
VIRGINIA C. KELLY, Judge